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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,513	10/23/2003	William James Gordon Liddell	B578 0001	6049
720	7590	04/28/2006	EXAMINER	
OYEN, WIGGS, GREEN & MUTALA LLP 480 - THE STATION 601 WEST CORDOVA STREET VANCOUVER, BC V6B 1G1 CANADA			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 04/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/690,513	<b>Applicant(s)</b> LIDDELL, WILLIAM JAMES GORDON	
	<b>Examiner</b> Jes F. Pascua	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/23/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "center sheet having a thickness dimension slightly greater than a thickness dimension of an article" (claims 13 and 28) and the top and bottom sheets being transparent material (claims 15 and 30) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13 and 28 recite "the center sheet has a thickness dimension slightly greater than a thickness dimension of the article". Although one of ordinary skill in the art would recognize that there is some limit to the thickness of the center sheet in the claims, they would not be able to determine, with any degree of certainty or precision, the particular limits of the thickness recited in the claim so as to ascertain the metes and bounds of the claims.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 16-19 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,460,265 to Kiolbasa. See Figs. 1-12.

Kiolbasa discloses a paperboard package comprising a top sheet 50, a bottom sheet 20, a center sheet 40 adhesively attached to the top and bottom sheets, a first

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aperture 45 forming an open-ended pocket between the top and bottom sheets and a closure flap 60, 70 formed on an end of the bottom sheet 20 adjacent an end of the center sheet 40 and connected to the bottom sheet 20 by a pair closely-spaced fold lines at foldable joint 94. As a note, the first aperture 45 in the center sheet 40 of Kiolbasa is located in and intersects one end of the center sheet to the same degree applicant sets forth the metes and bounds of "one end of the center sheet".

Furthermore, Kiolbasa discloses the first aperture 45 to be slightly larger than the article to be received within the pocket. In the top sheet 50, Kiolbasa provides a second aperture 55 adjacent the one end of the center sheet 40. The closure flap 60, 70 includes an adhesive strip 16 (which Kiolbasa discloses may be resealable) and a tear strip 97 extending between a pair of lines of weakening.

Regarding claims 16-19 and 22, Kiolbasa meets the structure implied by the method steps. Therefore, Kiolbasa anticipates the method claims 16-19 and 22.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-10, 12-14, 20, 21, 23-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiolbasa.

Kiolbasa discloses the claimed invention, as discussed above, except for the pair of lines of weakening being a pair spaced perforations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a pair of spaced perforations for the pair of lines of weakening in Kiolbasa since it was known in the art that a pair of spaced perforations form tear strips in packages.

Regarding claims 13 and 28, Kiolbasa discloses the claimed invention except for the material of the center sheet 40 having a thickness dimension slightly greater than the thickness dimension of the article to be packaged. It would have been an obvious matter of design choice to increase the thickness dimension of the material forming the center sheet 40 in Kiolbasa such that it is slightly greater than the thickness dimension of the article being packaged, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-10, 12, 13, 15-25, 27, 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,422,875 to Bribach and U.S. Patent No. 6,296,112 to Pettey.

Fig. 1 of Bribach discloses the claimed device except for a closure flap formed on an end of the bottom sheet adjacent the end of the center sheet that intersects the opening to the pocket. Pettey discloses that it is known in the art to provide a closure flap on the back sheet of an analogous pocket. See Figs. 30 and 31. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the back sheet of Bribach with the closure flap of Pettey, in order to securely seal the article within the pocket.

Regarding claims 10 and 25, Bribach and Pettey discloses the claimed invention, as discussed above, except for the closure flap being formed on the bottom sheet with a pair of closely spaced score lines. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the closure flap of Pettey on the bottom sheet of Bribach with a pair of closely spaced score lines, since it was known in the art that closely spaced score lines in closure flaps accommodate the thickness of the packaged article when the closure flap is folded over the pocket.

Regarding claims 16-19 and 22, Bribach and Pettey meet the structure implied by the method steps. Therefore, Bribach and Pettey meet the method claims 16-19 and 22.

#### ***Allowable Subject Matter***

10. Claims 11 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP